United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

807

IN THE
UNITED STATES COURT OF APPEALS FOR
THE DISTRICT OF COLUMBIA CIRCUIT

UNITED STATES OF AMERICA,	:	
	:	
Appellee	:	
	:	No. 23, 706
v.	:	
	:	
CHARLES SAWYER, JR.	:	
	:	
Appellant	:	
	:	

BRIEF ON BEHALF OF APPELLANT

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Appointed by this Court

Issue *

Whether the District Court erred in denying appellant's trial counsel the right to explain the difference between a presumption and an inference in the latter's summation to the jury.

* In accordance with Rule 8 (d) of the rules of this Court, this case has not been before this Court previously under the same or similar title.

References to Rulings - None

INDEX

AUTHORITIES CITED

Cases:

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Statement of the Case

This is an appeal from appellant's conviction on September 8, 1969, after a trial by jury, of Grand Larceny (22 D. C. Code 2201). On October 28, 1969, District Judge Aubrey Robinson sentenced appellant to a term of imprisonment of not less than two (2) years nor more than six (6) years. Notice of Appeal was timely filed.

The Government's case consisted of the testimony of three witnesses.

Heustis Whiteside, Jr., testified that on March 23, 1969 he stopped in the District of Columbia in his automobile en route from Philadelphia to Lynchburg, Virginia. He parked his car at 18th and Q. Streets, near Dupont Circle to visit some friends. The witness testified that he left his car sometime between 1:00 and 3:00 P.M.

and that he returned approximately 45 minutes to an hour later. Upon arriving at his car he noticed that a guitar, a camera, and several other articles that had been left on the back seat were gone and a note was on the windshield.

Mr. Whiteside further testified that the value of the missing items was in excess of $100.00. (Tr. Vol. I. 7-24)

Officer Paul J. Grasso, member of the Metropolitan Police Force, testified that at approximately 2:30 P. M. on the afternoon in question he monitored a radio run. Shortly thereafter the officer observed appellant carrying some clothes, a camera, and a black guitar case in the vacinity of the Cairo Hotel, 17 and Q. Streets, N. W. At this time Officer Grasso stopped appellant and advised the dispatcher that he had been apprehended. He further testified that Officer Casey came upon the scene at a later time and assisted in the arrest. (Tr. Vol. I 24-34)

Officer William R. Casey, also of the Metropolitan Police Force, offered testimony in corrobetation of Officer Grasso's testimony. (Tr. Vol. I. 34-37)

The Government moved the stolen items into evidence and rested its case. (Tr. Vol I. 37-38)

Appellant neither testified nor offered any evidence in his own behalf (Tr. Vol I. page 39).

In summary therefore, the Government's case consisted solely of the testimony of the complaining witness to the effect that he parked his car leaving

certain items in the back seat; and the testimony of the police officers, that after monitoring a radio run, they observed the appellant carrying the same items shortly thereafter. The Government relied upon the inference of guilt derived from the possession of recently stolen property.

In closing argument appellant's trial counsel sought to explain to the jury the difference between an inference and a presumption. The Court interdicted.

The relevant portion of the Transcript is set forth below verbatim:

"The case is based on circumstantial evidence; that is to say, the Government is asking you to infer from his possession that he, in fact, took it.

Now, I would like to explain one point to you; that is, the inference from recently stolen property--

THE COURT: No, you won't explain it; I will.

MR. WEISS: Very well, Your Honor.

THE COURT: You argue the evidence. I will tell the jury about the law.

MR. WEISS: May we approach the bench, Your Honor?

THE COURT: Yes.

(AT THE BENCH)

MR. WEISS: I was simply going to elaborate on the distinction between presumption and inference.

THE COURT: No, You do not, either."

(Tr. Vol II. 3-4)

Appellant contends that his conviction should be reversed and the case remanded for a new trial because trial counsel was improperly denied the right to make any comments on the applicability of the law to the evidence.

Summary of Argument

Appellant's contention in this appeal is that the District Court erred in not permitting trial counsel to discuss the difference between a presumption and an inference in the closing argument to the jury.

The right to argue the law to the jury has long been recognized in this country. Stettinius v. United States, 5 Cranch, C.C. 573, 5 DC 573, Fed. Cas. No. 13,387.

Counsel may properly discuss application of rules of law to the evidence. 5 Wharton's Criminal Law and Procedure Sec. 2089 (p.253).

This Court recently upheld the right of counsel to argue the legal results of certain verdicts. Bailey v. United States, 101 App.D.C. 236, 248 F.2d 558; Taylor v. United States, 95 App.D.C. 373, 222F.2d 398.

Other jurisdictions have permitted the prosecution to comment on the presumption of guilt arising from the possession of recently stolen property. McLain v. State, 18 Neb. 154, 24 N. W. 720.

Some jurisdictions have reversed convictions where the prosecution commented on the law where the comments stated the law incorrectly. People v. Weinstein, 220 N.E.2d 432; People v Sudduth, 421 P.2d 401.

In some jurisdictions the Courts have distinguished between the rights to argue the law and read the law to the jury, permitting the former and forbidding the latter. Peoples v. Holmes, 139 N.W. 2d. 771.

Argument

The Courts have long held that counsel for the defendant in criminal cases have the right to argue the law to the jury upon general issue. Stettinius v. United States, 5 Cranch, C.C. 573, 5 DC 573, Fed. Cas. No. 13,387.

"Counsel may properly discuss the application of... rules of law to the evidence. Thus, he may comment upon the presumption of guilt arising from the possession of recently stolen property." 5 Wharton's Criminal Law and Procedure Sec. 2089 p.253; see also McLain v. State, 18 Feb. 154, 24N.W. 720.

This Court upheld a conviction where the prosecutor argued to the jury that the legal result of guilty verdict was not a mandatory death penalty. Bailey v. United States, 101 App.D.C. 236, 248 F.2d 558. In another recent case counsel was permitted to argue the legal results of a verdict of not guilty by reason of insanity. Taylor v. United States, 95 App.D.C. 373, 222 F.2d 398.

In some jurisdictions counsel's arguments of law to a jury are held improper only when the law is incorrectly stated. For example, where a prosecutor argued that the defendant had to create a reasonable doubt, the conviction was reversed because this argument was an incorrect statement of the law. People v. Weinstein, 220 N.E.2d 432. Where defense counsel attempted to argue that the defendant had a constitutional right to refuse to submit to a breath test in a drunk driving case, the Trial Court

sustained an objection by the prosecutor. The Appellate Court upheld the conviction because the defendant's legal argument was an incorrect statement of the law. People v. Sudduth 421 P.2d 401.

On the other hand an Appellate Court upheld the conviction where the prosecutor argued that even if the defendant did not own the illegal viskey in question but knowingly allowed someone else to keep it on his property he should be found guilty. This argument was permissable because it was a correct statement of the law. Robinson v. State 167 S.E.2d 677.

Likewise an Appellate Court upheld a conviction wherein the prosecutor argued to the jury that the law allows impeachment by prior convictions. People v. Chambers 328 P.2d 236, 162 Cal.App.2d 215.

In the instant case there is no indication that counsel's argument to the jury would have been an incorrect statement of the law. Rather, the Trial Court refused to allow <u>any</u> argument of law.

Some Courts have distinguished between arguing the law to the jury and reading the law to the jury. "An attorney does not have the right to read the law to the jury, <u>but he does have the right to argue his theory of the law</u>." (Emphasis implied by the Court) People v. Holmes, 139 N.W.2d 771.

In the instant case trial counsel sought only to argue the law, not to read the law.

Conclusion

For the above specified reasons it is respectfully submitted that this Court should remand the case to the United States District Court with directions to grant appellant new trial.

Respectfully submitted,

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Certificate of Service

I hereby certify that two (2) copies of the foregoing Brief for Appellant were hand delivered to the offices of the United States Attorney for the District of Columbia, United States Courthouse, Washington, D. C. this _____ day of January, 1970.

_____

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Appointed by this Court